IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.246 OF 1997

Francis Xavier
Joseph John Chawl
Room No. HAA-44,
Janali Pada, Kalina,
Santacruz (East)
Mumbai-400029 ..Petitioner

Vs.

1. M/s.Magna Graphics (I) Pvt.Ltd.
101, C-D, Govt.Industrial Estate, Kandivli, (E)
Mumbai-400007
2. Mr.T.P.Panday,
Director,
M/s.Magna Graphics (I) Pvt.Ltd.
3. The Presiding Officer,
3rd Labour Court, Mumbai
Arun Chambers, 6th floor
Tardeo Mumbai-400034
4. President,
Industrial Court,
Maharashtra Mumbai ..Respondents

....

Mr.R.P.Lote for Petitioner
Mr.R.V.Paranjape with S.D.Puri for Respondent no.1

....

**CORAM : B.H.MARLAPALLE,J.**
**DATE : MARCH 17,2005**

**ORAL JUDGMENT:**

1. The petitioner was employed under the respondent no.1 company and he was awarded punishment of dismissal by an order dated 24.8.1995 on the ground of habitual absenteeism. This order was challenged in Complaint (ULP) No. 317 of 1995 filed under Section 28 read with Items 1(b), 1(d), 1(e) and 1(g) of Schedule IV of the MRTU and PULP Act, 1971 ('the Act' for short). The Labour Court dismissed the

complaint vide its judgment and order dated 17.4.1996 and the same was challenged in revision application (ULP) No. 63 of 1996 which came to be dismissed by the learned President, Industrial Court of Maharashtra on 2.9.1996.

2. The charge-sheet dated 6.3.1995 had charged him of remaining absent for a period of 32 days during the months of May, July, August, November and December, 1994. The employee submitted his reply to the said charge-sheet on 16.3.1995 and denied that he was the case of habitual absenteeism. He also contested the claim of days of absence and defended that he had applied for leave and the leave was recommended by the concerned supervisor and therefore, for majority of the days, he could not have been marked as absent without leave. The Management, therefore proceeded to conduct the domestic enquiry in which the workman participated. He was also defended by the Union representative whereas Mr.Bhupalsingh was the Management's representative. The Enquiry Officer submitted his findings on 18.5.1995 and held that the charge of habitual absence without leave was duly proved. The Management forwarded a copy of the enquiry report calling for his say on the same and also furnished his recent past record vide its letter dated 25.5.1995. The workman submitted his defence

statement on 10.6.1995 and the dismissal order dated 24.8.1995 followed.

3. In the dismissal order, the Management went to the extent of holding that from 10th to 19th May, 1994, the workman could not attend his duties because of the alleged injury sustained by him and therefore, after giving allowances for these ten days absence, the days of absence during the period of above said five months, came to 22 days. His past record of service was considered and it was noted that inspite of repeated opportunities having been provided to him for improving his record of attendance, his attendance record remained dismal and therefore, it proceeded to award punishment of dismissal as he did not show any improvement/reformation. Before the Labour Court, it was conceded that the enquiry was conducted fairly and properly and the findings recorded by the Enquiry Officer were not perverse. The emphasis laid by the workman before the Labour Court was that the punishment of dismissal was disproportionate with reference to the misconduct and therefore, the order of dismissal was illegal. This implied that the complaint filed before the Labour Court was pressed only under Item No.1(g) of Schedule IV of the Act. The said Item reads as under:

. 1. To discharge or dismiss the

employees;-

. "(g). for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment".

4. The Labour Court considered the past record of service and the decisions relied upon by the respective parties and reached to the conclusion that by considering the totality of all the circumstances, the workman was a chronic absenteeism case and the punishment of dismissal awarded on the face of his past service record could not be termed as shockingly disproportionate to the nature of charges proved against him.

5. In Revision, an additional issue was taken up regarding the powers of the Labour Court to mould the relief, even if the charges were proved, at par with the wide powers available under Section 11A of the Industrial Disputes Act, 1947. The learned President of the Industrial Court referred to a decision of this Court in the case of *Colour Chem Ltd. Vs. A.L.Alaspurkar [1991 II C.L.R. page 872]* and noted the following observations on this point:

. "Though the Maharashtra Recognition of Trade Unions and prevention of Unfair Labour Practices Act was enacted in 1971, it was brought into effect only

> on 8th September, 1975. By this time the law as to the import of Section 11-A of the Industrial Disputes Act and the additional powers conferred thereby upon the Industrial Adjudicators had already been settled by the Supreme Court in Workmen of Firestone's Case (supra). Considering the historical background of the Act, it is clear that the Act was not intended to do away with the law as it stood till then, nor was it intended to supplant the provisions of the Industrial Disputes Act, but was intended to create a new jurisdiction, though parallel, yet distinct. I am, therefore, unable to accept the contention of Deshmukh that the provisions of the Act, must be read subject or in the light of Section 11-A of the Industrial Disputes Act".

6. In the above case, this Court had referred to two decisions of the Supreme Court in the case of *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen [1965 (I) L.L.J. 462* on the point of shockingly disproportionate punishment as contemplated under Item 1(g). A Division Bench of this Court in the case of *S.M.Chemicals and Electronics Ltd. Bombay Vs. M.S.Ajmera & Anr. [1982 L.I.C. Page 97],* also considered the issue of shockingly disproportionate punishment and stated thus:

. "But where the punishment is shockingly disproportionate to, regarding being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimisation of

unfair labour practice".

7. The Industrial Court thus referred to a number of decisions as cited by the respective parties and more particularly to the decision of the Supreme Court in the case of B.C. Chaturvedi Vs. Union of India [1996 I C.L.R. 389] and noted that unless the Tribunal recorded a finding that the punishment awarded was shockingly disproportionate, regards being had to the nature of acts of misconduct proved, it did not have the powers to mould the relief by invoking the powers under Section 11A of the Industrial Disputes Act.

8. The past record of service as noted by both the Courts below from the record, in the instant case, was as under:-

| | | |
|---|---|---|
| 1. | February, 1993 | Issued advice letter |
| 2. | March, 1993 | Issued advice letter |
| 3. | April, 1993 | Issued advice letter |
| 4. | May, 1993 | Issued advice letter |
| 5. | June, 1993 | Issued advice letter |
| 6. | January, 1995 | Issued advice letter |

. The awarded punishment for suspension for two days by order dated 18.10.1993.

. Suspended for two days by order dated 18.3.1994 and warning letter issued on 16.6.1994

. All the above disciplinary actions were solely on the ground of misconduct of remaining absent without leave.

9. Both the Courts below have thus considered the scope of Item 1(g) of Schedule IV of the Act, as well as the past record of service regarding absenteeism of the workman. He was given more than adequate chances to improve his attendance but he continued to be a ‘chronic case of absenteeism ’ and it was not a minor or technical misconduct. These concurrent findings of both the Courts below cannot be termed as perverse or manifestly erroneous so as to call for interference in this petition under Article 227 of the Constitution of India.

10. In the result, the challenge to the orders passed by the Courts below fails and writ petition is hereby dismissed. Rule discharged with no order as to costs.

[ B.H.MARLAPALLE,J. ]